

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**DOUGIE LESTER, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

**CIVIL ACTION NO. 5:17-cv-00740
Honorable Judge Irene C. Berger**

PAY CAR MINING, INC., et al.,

Defendants.

MOTION TO ENFORCE SETTLEMENT

NOW COMES the Plaintiff, after attempting to confer with the opposing counsel, regarding the Defendants' arrearages in settlement payments in this case---amounting to \$208,800.00 of unpaid funds now due as of March 18, 2019. The Plaintiff has been unable to secure any response to those recent outreach and conferral efforts. Accordingly, Plaintiff humbly MOVES that this Honorable Court order the Defendants to make all outstanding payments due under the settlement as soon as practicable, inclusive of all then-current penalties. In support of this Motion, the Plaintiff states as follows:

1. On March 7, 2019, this Court entered an Order (ECF No. 63) approving the final settlement in this case.
2. Pursuant to that Order, the Defendants were subject to the following obligations:
 - a. The Defendants agreed to pay \$1,000,000.00 in three equal installments no later than: August 31, 2019, February 28, 2020, and April 30, 2020, and any applicable late penalties for days that the payments may be late.
 - b. The Class Counsel is to receive attorney's fees of fifteen percent (15%) of the \$1,000,000.00 payment, equating to \$150,000.00.
 - c. The Parties agreed that there are eighty-nine class members, providing \$9,550.56 per class member.

- d. The Defendants agreed to pay to the class representative the sum of \$10,000 due by September 10, 2018, and any applicable late penalties for days that the payment was late.
- e. The Defendants agreed to pay a class administration fee to Mountain State Justice of \$30,000.00 due by September 10, 2018, in order to cover the costs of the administration of the claims, verification of class members, and management of class notice, and any applicable late penalties for days that the payment was late.
- f. The Defendants agreed to pay a penalty of One Thousand Dollars (\$1,000.00) per day for each day that they are late in making payment to the class counsel, the class representatives, or to the class itself, with the right of a fifteen (15) day grace period. Should a payment be late and not cured within 15 days of the due date, then the penalty of One Thousand Dollars (\$1,000.00) for each such late payment will be retroactive to the original due date of the payment.

3. The Defendants had failed to make the payments by the timeline set in the Mediated Settlement Agreement, and the Parties entered a supplemental agreement for those funds, inclusive of late payments, to be paid on the following schedule:

- a. \$33,600.00 on January 18, 2019 (class administrator and representative);
- b. \$33,600.00 on February 1, 2019 (class administrator and representative);
- c. \$33,600.00 on February 15, 2019 (class administrator and representative);
- d. \$33,600.00 on March 1, 2019 (class administrator and representative);
- e. \$33,600.00 on March 15, 2019 (class administrator and representative);
- f. \$333,333.33 on August 31, 2019 to the common fund;
- g. \$333,333.33 on February 28, 2020 to the common fund; and
- h. \$333,333.34 on April 30, 2020 to the common fund.

4. The Defendants made two initial payments on the above schedule, but then failed to make the next three payments by the deadlines set forth in the supplemental agreement of the Parties.

5. The Defendants owe the following unpaid amounts that are now due:
- a. \$33,600.00 due February 15 (class administrator and representative);
 - b. \$33,600.00 due March 1 (class administrator and representative);
 - c. \$33,600.00 due March 15 (class administrator and representative);
 - d. \$10,000 – late fees for the two payments due on February 1 and paid on February 6. (\$2,000/day x 5)
 - e. \$62,000 – late fees for the two payments due on February 15 and not yet paid. (\$2,000/day x 31 as of 3/18)

- f. \$30,000 – late fees for the two payments due on March 1 and not yet paid.
(\$2,000/day x 15 as of 3/18)
- g. \$6,000 – late fees for the three payments due on March 15 and not yet paid.
(\$2,000/day x 3 as of 3/18)

6. The Defendants owe the following unpaid amounts that are now due equals \$208,800.00 as of March 18, 2019.

7. The Defendants further agreed that judgment may be entered against them for the sums due under the Mediated Settlement Agreement as adopted by the final Order of the Court.

8. Because the penalties of \$2,000.00 per day have been insufficient to catalyze compliance with this obligation under the Court's order, a more stringent sanction appears necessary in order to incent the Defendants to timely adhere to the Order of this Court.

WHEREFORE, Plaintiff respectfully requests that this Court order the Defendants to comply with the settlement terms set forth above by making the outstanding payment of \$208,800.00, as augmented by further late fees that accrue, and that the Court assess such further sanctions or penalties as it may deem necessary and just. Plaintiff further requests that he be awarded the reasonable fees and costs associated with preparing and prosecuting this Motion to Enforce, and such other relief that the Court deems equitable and just.

**Plaintiff,
Dougie Lester,
By counsel,**

/s/ Samuel B. Petsonk
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